NOV 4 2002

No. 01-1572

In the Supreme Court of the United States

COOK COUNTY, ILLINOIS, PETITIONER

v.

UNITED STATES EX REL. JANET CHANDLER

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

THEODORE B. OLSON
Solicitor General
Counsel of Record
ROBERT D. MCCALLUM, JR.
Assistant Attorney General
PAUL D. CLEMENT
Deputy Solicitor General
MALCOLM L. STEWART
Assistant to the Solicitor General
DOUGLAS N. LETTER
MICHAEL E. ROBINSON
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether local government entities are subject to *qui tam* actions under the False Claims Act, 31 U.S.C. 3729.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	1
Summary of argument	7
Argument:	
Local governments have been "persons" subject to suit under the False Claims Act since its enactment in 1863	9
A. The text, history, and purposes of the 1863 False Claims Act establish that local governments have been subject to potential liability under the Act since its initial passage in 1863	9
1. When the FCA was enacted in 1863, the term "person" was understood to encompass units of local government	10
2. Neither the 1863 Act's reference to the military status of potential defendants, nor its provision for imprisonment of violators, suggested an intent to exclude local governments from coverage	12
3. The 1863 Act was not limited to war profiteering, but applied broadly to all forms of fraud against the United States	14
4. The 1982 FCA amendments reinforce the conclusion that local governments were intended to be covered by the Act	15
B. The text and purposes of the 1986 FCA amendments reinforce the conclusion that local governments are subject to *qui tam* liability under the Act	16

Table of contents—Continued: Page

1. As amended in 1986, the FCA continues to use the word "person" to describe the class of potential defendants 17
2. In amending the FCA in 1986, Congress sought to expand and strengthen the remedies available under the Act 18
3. The fact that the 1986 amendments added a punitive component to the FCA remedies does not suggest that Congress intended to oust local governments from the Act's coverage 20

C. The Court's decision in *Stevens* does not control this case 26
1. Local governments are frequently subjected to forms of liability from which the States are exempt 26
2. The reasoning of the Court in *Stevens* does not indicate that local governments are exempt from liability under the FCA 27

Conclusion 29

TABLE OF AUTHORITIES

Cases:

Alden v. *Maine*, 527 U.S. 706 (1999) 27
American Soc'y of Mech. Eng'rs, Inc. v. *Hydrolevel Corp.*, 456 U.S. 556 (1982) 22
Carey v. *Piphus*, 435 U.S. 247 (1978) 20, 21
City of Newport v. *Fact Concerts, Inc.*, 453 U.S. 247 (1981) 6, 20, 22, 23, 24
Cowles v. *Mercer County*, 74 U.S. (7 Wall.) 118 (1869) 11

Cases—Continued: Page

Louisville, Cincinnati, & Charleston R.R. v. *Letson*, 43 U.S. (2 How.) 497 (1844) 10
Monell v. *New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978) 7, 9, 10, 11, 12, 15, 18
Mount Healthy City Bd. of Educ. v. *Doyle*, 429 U.S. 274 (1977) 27
Smith v. *Wade*, 461 U.S. 30 (1983) 21
United States v. *Amedy*, 24 U.S. (11 Wheat.) 392 (1826) 10
United States v. *Bornstein*, 423 U.S. 303 (1976) 2, 16
United States v. *McNinch*, 356 U.S. 595 (1958) .....
United States v. *Neifert-White Co.*, 390 U.S. 228 (1968) 15
United States ex rel. Marcus v. *Hess*, 317 U.S. 537 (1943) 16
United States ex rel. Springfield Terminal Ry. v. *Quinn*, 14 F.3d 645 (D.C. Cir. 1994) 2-3
Vermont Agency of Natural Res. v. *United States ex rel. Stevens*, 529 U.S. 765 (2000) ..... *passim*
Will v. *Michigan Dep't of State Police*, 491 U.S. 58 (1989) 27

Constitution and statutes:

U.S. Const. Amend. XI 27, 28
Act of Mar. 2, 1863, ch. 67, 12 Stat. 696 1
§ 1, 12 Stat. 696 ..... 12, 14
12 Stat. 696-697 2
§ 3, 12 Stat. 698 ..... 2, 10, 12, 13, 14
§ 4, 12 Stat. 698 2
§ 6, 12 Stat. 698 2
Act of Apr. 20, 1871, ch. 22, § 1, 17 Stat. 13 9
Act of Dec. 23, 1943, ch. 377, 57 Stat. 608 2
Act of Sept. 13, 1982, Pub. L. No. 97-258, § 3729, 96 Stat. 978 3

Statutes—Continued:	Page
Act of Nov. 8, 1985, Pub. L. No. 99-145, Tit. IX, § 931(b), 99 Stat. 699	3
Dictionary Act, ch. 71, § 2, 16 Stat. 431	12
False Claims Amendments Act of 1986, Pub. L. No. 99-562, 100 Stat. 3153	3
False Claims Act, 31 U.S.C. 3729 *et seq.*	1
31 U.S.C. 3729	4, 22
31 U.S.C. 3729 note	3
31 U.S.C. 3729(a)	1, 3, 5, 6, 17, 21-22, 27-28
31 U.S.C. 3729(a)(1)	3
31 U.S.C. 3729(a)(2)-(7)	3
31 U.S.C. 3729(c)	3
31 U.S.C. 3730(a)	4
31 U.S.C. 3730(b)(1)	4
31 U.S.C. 3730(b)(2)	4
31 U.S.C. 3730(b)(4)(B)	4
31 U.S.C. 3730(c)(1)	4
31 U.S.C. 3730(d)	4
31 U.S.C. 3733(*l*)(4)	28
Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890	4
Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*	28
31 U.S.C. 3801(a)(6)	28
42 U.S.C. 1983	6, 8, 9, 20, 21, 24, 27
Miscellaneous:	
64 Fed. Reg. 47,104 (1999)	4
H.R. Rep. No. 660, 99th Cong., 2d Sess. (1986)	1, 18, 19, 24
S. Rep. No. 345, 99th Cong., 2d Sess. (1986)	3, 18, 25-26

In the Supreme Court of the United States

No. 01-1572

COOK COUNTY, ILLINOIS, PETITIONER

v.

UNITED STATES EX REL. JANET CHANDLER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE UNITED STATES

This case involves a *qui tam* suit against a county under the False Claims Act (FCA), 31 U.S.C. 3729 *et seq.* The question presented is whether a county or other unit of local government is a "person" subject to potential liability under the Act, see 31 U.S.C. 3729(a). Because the FCA is the primary mechanism by which the federal government recoups losses suffered through fraud, and because the government receives the bulk of any award obtained through a *qui tam* action, the United States has an interest in the proper construction of the Act.

STATEMENT

1. The FCA "is used as the primary vehicle by the Government for recouping losses suffered through fraud." H.R. Rep. No. 660, 99th Cong., 2d Sess. 18 (1986) (*House Report*). The FCA was enacted in 1863 (see Act of Mar. 2, 1863, ch. 67, 12 Stat. 696 (1863 Act)), and "was originally aimed principally at stopping the massive frauds perpetrated by large

contractors during the Civil War," *United States* v. *Bornstein*, 423 U.S. 303, 309 (1976). The 1863 Act provided that "any person not in the military" who submitted a false or fraudulent claim for payment by the United States government would "forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained." § 3, 12 Stat. 698.[1]

The 1863 Act further provided that a suit to recover the statutory remedies "may be brought and carried on by any person, as well for himself as for the United States; the same shall be at the sole cost and charge of such person, and shall be in the name of the United States." § 4, 12 Stat. 698. If the suit resulted in a monetary recovery, the award was divided evenly between the private plaintiff and the United States. § 6, 12 Stat. 698. In authorizing suits by private parties (known as relators) to collect the statutory forfeitures, the 1863 Act employed a venerable mode of procedure commonly referred to as a *qui tam* action. See *Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 768 & n.1 (2000).

The Act was amended in 1943 to preclude "parasitic[al]" *qui tam* actions based upon information in the government's possession; to authorize the government to take over the prosecution of *qui tam* suits; and to reduce the relator's share of any recovery that such actions produced. Act of Dec. 23, 1943, ch. 377, 57 Stat. 608; see *United States ex rel. Springfield Terminal Ry.* v. *Quinn*, 14 F.3d 645, 649-650

[1] The 1863 Act separately provided that "any person in the land or naval forces of the United States, or in the militia in actual service of the United States, in time of war," who committed any of the proscribed acts would be subject to "trial by a court-martial, and if found guilty shall be punished by fine and imprisonment, or such other punishment as the court-martial may adjudge, save the punishment of death." § 1, 12 Stat. 696-697.

(D.C. Cir. 1994). In 1982, Congress recodified the Act and amended, *inter alia*, its liability provision, replacing the phrase "any person not in the military or naval forces of the United States, nor in the militia called into or actually employed in the service of the United States," with the phrase "[a] person not a member of an armed force of the United States." See Act of Sept. 13, 1982, Pub. L. No. 97-258, § 3729, 96 Stat. 978; 31 U.S.C. 3729 note; *Stevens*, 529 U.S. at 782. In 1985, Congress mandated the award of treble (rather than double) damages in any FCA case involving "a false claim related to a contract with the Department of Defense." See Act of Nov. 8, 1985, Pub. L. No. 99-145, Tit. IX, § 931(b), 99 Stat. 699; 31 U.S.C. 3729 note.

After a comprehensive re-examination of the FCA, Congress enacted the False Claims Amendments Act of 1986, Pub. L. No. 99-562, 100 Stat. 3153, which substantially revised the Act "[i]n order to make the statute a more useful tool against fraud in modern times." S. Rep. No. 345, 99th Cong., 2d Sess. 2 (1986) (*Senate Report*). In its current form, the FCA prohibits "[a]ny person" from "knowingly present[ing], or caus[ing] to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval." 31 U.S.C. 3729(a)(1). The Act also prohibits a variety of related deceptive practices involving government funds and property. 31 U.S.C. 3729(a)(2)-(7). The Act defines "claim" to include "any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded." 31 U.S.C. 3729(c). At the time of the events that gave rise to this suit, a "person" who violated the FCA was "liable to the United States Government for a civil penalty of not less than $5,000 and not more than

$10,000, plus 3 times the amount of damages which the Government sustains." 31 U.S.C. 3729(a).[2]

The FCA continues to authorize enforcement actions to be filed either by the Attorney General or by private relators. Section 3730(a) provides that "[i]f the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person." 31 U.S.C. 3730(a). Section 3730(b)(1) states that "[a] person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government." 31 U.S.C. 3730(b)(1).

When a *qui tam* action is filed, the government may intervene in the suit "within 60 days after it receives both the complaint and the material evidence and information," 31 U.S.C. 3730(b)(2), in which case the government "shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action," 31 U.S.C. 3730(c)(1). If the government declines to take over the conduct of the litigation, "the person bringing the action shall have the right to conduct the action." 31 U.S.C. 3730(b)(4)(B). If a *qui tam* action results in the recovery of damages and civil penalties, the recovery is divided between the Government and the relator, with the relator receiving a maximum of 30% of the total award. 31 U.S.C. 3730(d).

2. Respondent Janet Chandler was hired by the Hektoen Institute for Medical Research to be project director of a federally-funded program designed to treat drug-dependent

[2] After the events that gave rise to this suit, the civil penalty range under the FCA was adjusted upward to a minimum penalty of $5500 and a maximum penalty of $11,000, pursuant to a statutory mandate applicable to civil penalties enforced by all federal agencies. See 64 Fed. Reg. 47,104 (1999) (implementing the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890).

pregnant women and to evaluate the success of the treatment. Pet. App. 2a-3a, 31a-32a. Respondent subsequently brought a *qui tam* action against the Institute, Cook County Hospital, and petitioner Cook County. The gravamen of the suit was that the defendants had violated the FCA by misrepresenting the results of the program to the federal government and by failing in various respects to comply with the terms of the grant and with applicable federal regulations in their provision of treatment to the women who participated in the program. *Ibid.* The United States did not intervene to take over the litigation.

Petitioner moved to dismiss the claims against it, arguing, *inter alia*, that as a unit of local government it could not be held liable under the FCA. The district court initially denied petitioner's motion to dismiss. See Pet. App. 40a-46a. The court found that the term "person" in Section 3729(a) includes state and local governments, *id.* at 40a-41a, and that the remedies available under the FCA are not "punitive" in character, *id.* at 43a-46a.

While the suit remained pending in the district court, this Court issued its decision in *Stevens*. The Court in *Stevens* held that a State or state agency is not a "person" subject to *qui tam* liability under the FCA. 529 U.S. at 778-787. The Court found no clear evidence in the text or history of the FCA that would overcome the "longstanding interpretive presumption that 'person' does not include the sovereign." *Id.* at 780. The Court also observed, *inter alia*, that "the current version of the FCA imposes damages that are essentially punitive in nature, which would be inconsistent with state *qui tam* liability in light of the presumption against imposition of punitive damages on governmental entities." *Id.* at 784-785.

Relying on *Stevens*, petitioner sought reconsideration of the district court's earlier order denying its motion to dismiss. The district court granted that motion and dismissed

respondent's complaint against petitioner. Pet. App. 27a-29a. The court found it "quite clear that under *Stevens* the County is immune from the imposition of punitive damages, which are mandatory if liability is found under the FCA." *Id.* at 28a.

3. The court of appeals reversed. Pet. App. 1a-26a. The court stated that "by 1844, both private and municipal corporations were presumptively included within the meaning of 'person.' Nowhere in the text [of Section 3729] is there an exception for suits against municipalities. Nor have the parties suggested any other statutory provision that would limit the text before us." *Id.* at 8a (citation omitted). The court explained that the purpose of the 1986 FCA amendments was to increase the effectiveness of the Act, *id.* at 11a, and it found that "a study of the text and structure of the Act, supported by the available legislative history, leads to the conclusion that Congress intended to include counties within the meaning of 'person'" in Section 3729(a), *id.* at 13a.

The court of appeals rejected petitioner's contention that the court was "prohibited from interpreting the statute to include counties because of the municipalities' traditional, commonlaw immunity from punitive damages." Pet. App. 13a. The court acknowledged that municipalities are not subject to punitive damages under 42 U.S.C. 1983. Pet. App. 13a-14a (citing *City of Newport* v. *Fact Concerts, Inc.*, 453 U.S. 247 (1981)). The court explained, however, that the remedies available under the FCA differ in significant respects from a traditional punitive damages award. *Id.* at 15a-16a. The court further observed that, in its view, counties were subject to liability under the original 1863 version of the FCA, *id.* at 16a, and it stated that Congress, in amending the Act in 1986, "did not indicate in any way that it intended to exempt municipal entities from the scope of the statute," *id.* at 17a.

The court of appeals also rejected petitioner's contention that this Court's decision in *Stevens* compelled dismissal of respondent's claims. Pet. App. 18a-20a. The court found that petitioner's "reading of *Stevens* cannot be squared with the essential rationale of that opinion nor with the established doctrinal differences, long recognized in our jurisprudence, between the status of the states of the Union and municipal entities." *Id.* at 19a. The court observed that "[t]he central holding of *Stevens* is that states are not within the FCA's definition of 'person' because of the 'longstanding interpretive presumption that "person" does not include the sovereign.'" *Ibid.* (quoting *Stevens*, 529 U.S. at 780). The court of appeals explained that, under this Court's decisions, "[t]he presumption cuts the other way for municipalities." *Id.* at 20a. The court concluded that "counties are not only amenable to the FCA but also are subject to the same penalties as other defendants." *Ibid.*

SUMMARY OF ARGUMENT

A. As this Court held in *Monell* v. *New York City Dep't of Soc. Servs.*, 436 U.S. 658, 685-689 (1978), the term "person" has long been understood to encompass artificial legal entities, including units of local government. Nothing in the text of the original 1863 FCA undermines the inference that the "person[s]" subject to liability under the Act included counties and municipalities. Moreover, local governments are as capable as natural persons or commercial corporations of submitting false claims to the federal government, and a locality's submission of a false claim causes the same harms as a private party's comparable wrongdoing. The text and purposes of the 1863 FCA thus establish that the Act's liability provision applied to local governments.

B. The 1986 FCA amendments, which were designed to *enhance* the effectiveness of the Act, did not simultaneously exclude local governments from its coverage by increasing

the applicable sanctions. Congress retained the word "person" to describe the class of potential FCA defendants, and the legislative history reflects congressional awareness of this Court's decision in *Monell*. Moreover, in light of the overriding thrust of the 1986 amendments, namely to strengthen and expand the FCA's remedial scheme, it is most unlikely that Congress would have exempted local governments from FCA coverage.

The fact that the FCA in its current form authorizes remedies having an essentially "punitive" component does not suggest that the 1986 amendments *exempted* local governments from all liability. Unlike 42 U.S.C. 1983, which does not explicitly address the question of damages, the FCA specifies the sanctions to be imposed on any "person" who is found to have committed the proscribed acts. And while the remedies mandated by the FCA may serve in part to punish wrongdoers, they are significantly different from traditional punitive damages.

Finally, this Court's precedents do not support petitioner's effort to invoke a presumption against imposition of punitive remedies as a basis for avoiding FCA liability altogether. The consequence of finding punitive damages unavailable in Section 1983 actions against municipalities was simply that punitive damages could not be recovered. Section 1983 actions against municipalities remained available, as did compensatory damages in such cases. Here, by contrast, petitioner advances an all-or-nothing position. Petitioner suggests that by expanding liability under the FCA, Congress ousted local governments from the Act's coverage entirely. Nothing in the amendments' text or history supports that counterintuitive result. If Congress had determined that the increased damages and civil penalties mandated by the 1986 amendments were not appropriately imposed upon local governments, the far more natural course would have been to retain, as to those defendants, the

sanctions (double damages plus $2000 per false claim) that were available under the prior version of the Act and that this Court had held to be predominantly remedial in character.

C. The Court's decision in *Stevens*, which held that States are not "person[s]" subject to *qui tam* liability under the FCA, does not control this case. Because state and local governments stand on quite different constitutional footing, there is nothing anomalous about subjecting local governments to forms of liability from which the States are exempt. And the reasoning of the Court in *Stevens* is largely inapplicable to the distinct question whether the FCA's liability question covers counties and municipalities.

ARGUMENT

LOCAL GOVERNMENTS HAVE BEEN "PERSONS" SUBJECT TO SUIT UNDER THE FALSE CLAIMS ACT SINCE ITS ENACTMENT IN 1863

A. The Text, History, And Purposes Of The 1863 False Claims Act Establish That Local Governments Have Been Subject To Potential Liability Under The Act Since Its Initial Passage In 1863

In *Monell* v. *New York City Dep't of Soc. Servs.*, 436 U.S. 658, 685-689 (1978), this Court held that municipal corporations are "persons" subject to liability under 42 U.S.C. 1983, which was originally enacted as Section 1 of the 1871 Civil Rights Act. The Court explained that "by 1871, it was well understood that corporations should be treated as natural persons for virtually all purposes of constitutional and statutory analysis." 436 U.S. at 687. The Court also observed that "since municipalities through their official acts could, equally with natural persons, create the harms intended to be remedied by § 1, and, further, since Congress intended § 1 to be broadly construed, there is no reason to suppose that municipal corporations would have been

excluded from the sweep of § 1." *Id.* at 685-686. The same considerations apply here.

1. When The FCA Was Enacted In 1863, The Term "Person" Was Understood To Encompass Units Of Local Government

As first enacted in 1863, the FCA imposed monetary liability on "any person not in the military" who submitted a false or fraudulent claim for payment by the United States government. § 3, 12 Stat. 698; see p. 2, *supra*. In *Monell*, this Court summarized its early jurisprudence concerning the legal status of commercial and municipal corporations. The Court observed that "[w]hen this Court first considered the question of the status of corporations, Mr. Chief Justice Marshall, writing for the Court, denied that corporations 'as such' were persons as that term was used in Art. III and the Judiciary Act of 1789. See *Bank of the United States* v. *Deveaux*, 5 Cranch 61, 86 (1809)." 436 U.S. at 687. The *Monell* Court further explained, however, that "[b]y 1844, * * * the *Deveaux* doctrine was unhesitatingly abandoned." *Ibid.* The Court quoted its decision in *Louisville, Cincinnati, & Charleston R.R.* v. *Letson*, 43 U.S. (2 How.) 497 (1844), which held that "[a] corporation created by and doing business in a particular state, is to be deemed to all intents and purposes as a person, although an artificial person." *Id.* at 558; see *Monell*, 436 U.S. at 687-688. The Court in *Monell* then explained that "in *Cowles* v. *Mercer County*, 7 Wall. 118, 121 (1869), the *Letson* principle was automatically and without discussion extended to municipal corporations. Under this doctrine, municipal corporations were routinely sued in the federal courts." *Id.* at 688.[3]

---

[3] Indeed, well before *Letson* the Court had held that a criminal statute proscribing the destruction of a vessel with intent to prejudice the underwriters applied to a corporate defendant. See *United States* v. *Amedy*, 24 U.S. (11 Wheat.) 392, 412-413 (1826). The Court explained:

> The mischief intended to be reached by the statute is the same, whether it respects *private* or *corporate* persons. That corporations are, in law, for civil purposes, deemed persons, is unquestionable. And the citation from 2 *Inst.* 736 establishes, that they are so deemed within the purview of penal statutes. Lord Coke, there, in commenting on the statute of 31 Eliz. ch. 7. respecting the erection of cottages, where the word used is, "no *person* shall," &c. says, "this extends as well to persons *politic* and *incorporate*, as to natural persons whatsoever."

Id. at 412. In *Letson* itself, the Court similarly quoted with approval Lord Coke's statement that "every corporation *and body politic* residing in any county, riding, city or town corporate, or having lands or tenements in any shire, * * * are said to be inhabitants there." 43 U.S. (2 How.) at 558-559 (emphasis added). Those decisions belie the suggestion that the decision in *Cowles* represented a break from prior understandings of the scope of the term "person."

Petitioner contends (Br. 16) that "inasmuch as the 1863 Act was enacted six years before the *Cowles* decision, the holding in *Cowles* does not support the court of appeals' position that local governments were presumptively considered persons in 1863." If the decision in *Cowles* had *overruled* a prior understanding that the legal status of municipal corporations differed from that of commercial corporations, petitioner's argument might have some force. But neither *Cowles* itself, nor the *Monell* Court's description of the *Cowles* holding, supports that characterization of the 1869 decision. *Cowles* stated that the question of a municipal corporation's susceptibility to suit in federal court "presents but little difficulty." *Cowles* v. *Mercer County*, 74 U.S. (7 Wall.) 118, 121 (1869). In *Monell*, the Court explained that in *Cowles*, the principle that corporations should be subject to suit on the same terms as natural persons "was *automatically and without discussion* extended to municipal corporations." 436 U.S. at 688 (emphasis added). In support of its assertion that "[u]nder this doctrine, municipal corporations were routinely sued in the federal courts," *ibid.*, the *Monell*

Court relied on cases decided as early as 1864, see *id.* at 673 n.28, 688 n.49.

Thus, both *Cowles* and *Monell* treated the suability of municipal corporations on the same terms as natural persons as following logically and inevitably from the Court's 1844 decision in *Letson*. It is appropriate to presume that Congress, in enacting the FCA in 1863, acted on the basis of the same understanding. Indeed, petitioner cites *no* instance, during the period between 1844 and 1869, in which commercial and municipal corporations were treated distinctly for these purposes.[4]

2. Neither The 1863 Act's Reference To The Military Status Of Potential Defendants, Nor Its Provision For Imprisonment Of Violators, Suggested An Intent To Exclude Local Governments From Coverage

The 1863 Act contained separate provisions, establishing distinct sanctions, for (a) "any person in the land or naval forces of the United States, or in the militia in actual service of the United States, in time of war," and (b) "any person not in the military or naval forces of the United States, nor in the militia called into or actually employed in the service of the United States." §§ 1, 3, 12 Stat. 696, 698. The Act further provided that a "person not in the military" who committed the proscribed acts was subject not only to civil monetary sanctions, but also to criminal penalties including

[4] The Dictionary Act was enacted in 1871 and provided that "in all acts hereafter passed * * * the word 'person' may extend and be applied to bodies politic and corporate * * * unless the context shows that such words were intended to be used in a more limited sense." Dictionary Act, ch. 71, § 2, 16 Stat. 431. As petitioner points out (Br. 16 n.7), the Dictionary Act applied by its terms to federal statutes "hereafter passed" and therefore had no specific application to the 1863 FCA. The Dictionary Act nevertheless provides further evidence of a contemporaneous understanding that the term "person" as used in its ordinary sense included "bodies politic and corporate."

imprisonment. § 3, 12 Stat. 698. Petitioner contends (Br. 13) that the Act's "criminal penalties and military reference are * * * inherently inconsistent with local governmental liability."

That argument is misconceived. Of course, a county or other local governmental unit can neither be enrolled in the military nor subjected to imprisonment. But the same is true of commercial corporations, which have long been treated as "person[s]" within the meaning of the Act's liability provision. Given the established presumption that the word "person" includes artificial legal entities, a commercial or municipal corporation is very naturally characterized as a "person not in the military." And as with commercial corporations, the fact that a municipal corporation cannot be imprisoned does not suggest that Congress intended to exempt it from the 1863 Act's provisions imposing *monetary* liability.

In holding that States are not "person[s]" subject to *qui tam* liability under the FCA, the Court in *Stevens* referred to the above-cited provisions in concluding that "the text of the [1863 Act] does less than nothing to overcome the presumption that States are *not* covered." 529 U.S. at 782. With respect to corporations, however, the Court offered the following caveat: "We do not suggest that these features directed only at natural persons cast doubt upon the courts' assumption that § 3729(a) extends to corporations—but that is because the presumption with regard to corporations is just the opposite of the one governing here: they are presumptively *covered* by the term 'person.'" *Ibid.* (citation omitted). The Court thus made clear that any negative inference that might be drawn from the 1863 Act's references to military status and criminal penalties would not overcome

the established presumption that the term "person" encompasses artificial legal entities such as corporations.[5]

3. The 1863 Act Was Not Limited To War Profiteering, But Applied Broadly To All Forms Of Fraud Against The United States

Petitioner contends that, "[p]laced in its historical context, the 1863 Act was adopted as a response to the plundering of the public treasury in the purchasing of necessities of war." Pet. Br. 18 (internal quotation marks omitted). Petitioner states (Br. 18-19) that "[n]o court, to date, has identified any case of a local government having sold military goods to the United States during the Civil War, let alone defrauding the United States in the sale of military goods." But while war-related frauds may have furnished the immediate impetus to enactment of the FCA, see *Stevens*, 529 U.S. at 781, Congress did not limit the reach of the Act to war profiteering. "In the various contexts in which questions of the proper construction of the [FCA] have been presented, the Court has consistently refused to accept a rigid, restrictive reading," but rather has construed the Act to extend to "all fraudulent attempts to cause the Government to pay out

[5] Contrary to petitioner's suggestion (Br. 17), Congress's decision in 1863 to deal separately with "person[s] in the land or naval forces of the United States" and "person[s] not in the military or naval forces of the United States" (§§ 1, 3, 12 Stat. 696, 698) does not reflect an intent that any category of "person" would be exempt from FCA liability. Taken together, those categories include *all* "person[s]" who might engage in the prohibited conduct. Congress dealt with the two classes separately so that military personnel who committed the proscribed acts could be sanctioned in a different manner (including trial by court-martial, see § 1, 12 Stat. 697) from civilian violators. As petitioner points out (Br. 17), the Court in *Stevens* rejected the "proposition that the FCA was intended to cover all types of *fraudsters*." 529 U.S. at 781 n.10. The scope of the 1863 Act's coverage was limited, however, only in the sense that its liability provision was restricted to "person[s]." Congress's decision to limit the Act's coverage in that manner does not suggest that any entity traditionally regarded as a legal "person" should also escape liability.

sums of money." *United States* v. *Neifert-White Co.*, 390 U.S. 228, 232, 233 (1968); see *Stevens*, 529 U.S. at 781 n.10 (explaining that *Neifert-White* "stand[s] for the unobjectionable proposition (codified in [31 U.S.C.] § 3729(c)) that the FCA was intended to cover all types of *fraud*").

Counties and municipalities are as capable as natural persons or commercial corporations of submitting false claims for payment to the federal government. Submission of a false claim by a local government, moreover, threatens the federal fisc and the integrity of federal funding programs in precisely the same way as does a private party's comparable misconduct. Compare *Monell*, 436 U.S. at 685-686 (construing 1871 Civil Rights Act to apply to municipalities because, *inter alia*, "municipalities through their official acts could, equally with natural persons, create the harms intended to be remedied"). The fraudulent conduct alleged in this case (see p. 5, *supra*), for example, is no less disruptive of federal interests than comparable wrongdoing committed by a private hospital. The legislative purposes underlying the 1863 Act therefore support, rather than undermine, application of the established interpretive rule that the term "person" is presumed to encompass local governments.

4. The 1982 FCA Amendments Reinforce The Conclusion That Local Governments Were Intended To Be Covered By The Act

In 1982, Congress recodified the Act and, *inter alia*, amended its liability provision, replacing the phrase "any person not in the military or naval forces of the United States, nor in the militia called into or actually employed in the service of the United States," with the phrase "[a] person not a member of an armed force of the United States." See p. 3, *supra*. At the time of the 1982 amendments, this Court's *Monell* decision reaffirming that the term "person" presumptively encompasses local governments was just four

years old (see pp. 9-12, *supra*), and the Court had construed the FCA expansively to cover all forms of fraud upon the United States (see pp. 14-15, *supra*). Moreover, the FCA remedies available at that time—double damages plus a civil penalty of $2000 per false claim—had been held to serve predominantly compensatory purposes, and so would not implicate any concerns regarding punitive liability. See *United States* v. *Bornstein*, 423 U.S. 303, 315 (1976) (FCA's remedial provisions reflect "the congressional judgment that double damages are necessary to compensate the Government completely for the costs, delays, and inconveniences occasioned by fraudulent claims"); *United States ex rel. Marcus* v. *Hess*, 317 U.S. 537, 551-552 (1943) ("We think the chief purpose of the statutes here was to provide for restitution to the government of money taken from it by fraud, and that the device of double damages plus a specific sum was chosen to make sure that the government would be made completely whole."). In recodifying and amending the Act in 1982, Congress would therefore have had every reason to conclude that a provision imposing FCA liability upon "person[s]" would be understood to cover counties and municipalities. Under those circumstances, Congress's decision to retain the word "person" to describe the class of potential FCA defendants reinforces the conclusion that local governments were intended to be covered by the Act.

B. The Text And Purposes Of The 1986 FCA Amendments Reinforce The Conclusion That Local Governments Are Subject To *Qui Tam* Liability Under The Act

The 1986 FCA amendments increased the applicable monetary sanctions, to three times the government's damages plus a civil penalty of between $5000 and $10,000. See pp. 3-4, *supra*. (The civil penalty range has since been increased to $5500-$11,000 to account for inflation. See note 2, *supra*.) In *Stevens*, the Court held that "the current

version of the FCA imposes damages that are essentially punitive in nature." 529 U.S. at 784; see *id.* at 784-786. Petitioner contends that, even if local governments were "person[s]" subject to suit under the FCA as originally enacted in 1863, the effect of the 1986 amendments was to "immuniz[e] local governments from FCA suits." Pet. Br. 22; see *id.* at 21-37.

That argument lacks merit. Because Section 3729(a) continues to impose liability upon a "person" who commits one of the proscribed acts, there is no basis for inferring that Congress intended in 1986 to narrow the range of potential FCA defendants by ousting municipal corporations from the Act's coverage. To the contrary, the overall thrust of the 1986 amendments was to expand the sweep of the FCA to make it a more effective tool for combating fraud. Congress's decision to increase the applicable monetary penalties provides no ground for giving the term "person" other than its usual construction.

1. As Amended In 1986, The FCA Continues To Use The Word "Person" To Describe The Class Of Potential Defendants

Like the original 1863 Act, the FCA as amended in 1986 uses the term "person" to describe the category of potential FCA defendants. 31 U.S.C. 3729(a). The 1986 amendments were enacted only eight years after this Court's decision in *Monell*, which explained that the term "person" had been understood for more than a century to encompass local governmental units. Given that settled understanding, it is most unlikely that Congress would have continued to use the word "person" in Section 3729(a) if it had intended to exempt local governments from liability under the Act, or that it would have signaled its intent to oust previously-covered localities by so indirect and elliptical a means as expanding available monetary remedies.

The Senate Report accompanying the 1986 amendments expressed the understanding, with respect to the prior version of the Act, that "[t]he term 'person' is used in its broad sense to include partnerships, associations, and corporations * * * as well as States and political subdivisions thereof." *Senate Report* 8. In support of that proposition, the Report cited (*inter alia*) this Court's decision in *Monell*. *Ibid.* This Court in *Stevens* found that legislative history to be an insufficient basis for departing from the usual presumption that the word "person" does not encompass States, at least with respect to the imposition of *qui tam* liability under the Act. See 529 U.S. at 780-781, 783 n.12. In the present case, however, the question is whether petitioner has carried its burden of establishing that Congress intended the 1986 amendments to *remove* local governments from coverage, in derogation of the usual presumption that the term "person" *does* include localities. The Senate Report's express reference to "political subdivisions," and its citation to *Monell*, belie that contention.

2. In Amending The FCA In 1986, Congress Sought To Expand And Strengthen The Remedies Available Under The Act

Petitioner's contention that the 1986 FCA amendments entirely removed local governments from coverage also runs counter to the overriding purposes of the 1986 legislation. As the court of appeals recognized, "Congress' purpose in enacting those amendments was to increase the effectiveness of the Act." Pet. App. 11a; see *Senate Report* 2 (noting that "[t]he main portions of the act have not been amended in any substantial respect since signed into law in 1863," and that amendments were appropriate "[i]n order to make the statute a more useful tool against fraud in modern times"); *House Report* 16 ("The purpose of [the legislation] is to amend the existing civil false claims statute in order to

strengthen and clarify the government's ability to detect and prosecute civil fraud and to recoup damages suffered by the government as a result of such fraud."). Congress's objective was to *strengthen* FCA enforcement and to *expand* the remedies available to the government. *Inter alia*, the 1986 amendments increased the amount of damages and penalties to be awarded for violations; clarified the Act's scienter requirement and its definition of "claim"; expanded the rights of *qui tam* relators and allowed them to recover a somewhat greater share of any monetary award; and enhanced the government's ability to conduct investigations prior to the filing of FCA suits. See *House Report* 17.

In light of Congress's overriding intent to strengthen and expand a remedial scheme that had become outmoded over time, it is most unlikely that Congress would have simultaneously exempted local governments from FCA coverage altogether. That is especially so in light of the fact that local governments receive a substantial, and steadily increasing, share of federal funds. See Pet. App. 18a ("Billions of dollars flow from the federal government to municipalities each year."); Pet. Br. 19 (stating that "the number of federally-funded services provided by local governments are largely the result of legislation passed in the latter half of the twentieth century"). And it is particularly unlikely that Congress would have sought to exempt such a significant class of federal funding recipients from the Act's enforcement mechanisms without (a) changing the word ("person") used to describe potential FCA defendants, or (b) alluding to such an intent at any point in the 1986 legislative history.

3. The Fact That The 1986 Amendments Added A Punitive Component To The FCA Remedies Does Not Suggest That Congress Intended To Oust Local Governments From The Act's Coverage

In contending that the 1986 amendments should be read to oust previously-covered localities from the scope of the FCA, petitioner principally relies on this Court's decision in *City of Newport* v. *Fact Concerts, Inc.*, 453 U.S. 247 (1981). In *Fact Concerts*, the Court held that punitive damages are unavailable in a suit against a municipality under 42 U.S.C. 1983. See 453 U.S. at 258-271. Petitioner contends (Br. 28) that "[t]he absence of an explicit abrogation of immunity in the liability provision of the FCA is a clear indication that Congress did not intend to impose punitive damages on local governments." Petitioner's reliance on *Fact Concerts* is misplaced.

a. Section 1983 does not specify the remedies that are available in a suit against a local government. Rather, it states that

> [e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, *shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.*

42 U.S.C. 1983 (emphasis added). Because "[t]he Members of the Congress that enacted § 1983 did not address directly the question of damages," *Carey* v. *Piphus*, 435 U.S. 247, 255 (1978), this Court has relied heavily on background presumptions and understandings regarding the appropriate elements of recovery in particular circumstances. See, *e.g.*,

Smith v. *Wade*, 461 U.S. 30, 34 (1983) ("In the absence of more specific guidance, [this Court has] looked first to the common law of torts (both modern and as of 1871), with such modification or adaptation as might be necessary to carry out the purpose and policy of the statute.") (citing *Carey*, 435 U.S. at 253-264).

In *Fact Concerts*, the Court explained that "[i]t was generally understood by 1871 that a municipality, like a private corporation, was to be treated as a natural person subject to suit for a wide range of tortious activity, but this understanding did not extend to the award of punitive or exemplary damages." 453 U.S. at 259-260 (footnote omitted). "Finding no evidence that Congress intended to disturb the settled common-law immunity," *id.* at 266, and perceiving no overriding policy justification for subjecting municipalities to punitive damages under Section 1983, *id.* at 266-271, the Court construed that statute not to authorize a punitive damages award against a local government. Municipalities remained proper defendants under Section 1983, and compensatory damages remained available in actions against local governments. Because Section 1983 does not explicitly authorize punitive damages, let alone require that they be awarded in any particular case, the determination that punitive damages were not an appropriate item of relief in a suit against a municipality was entirely consistent with the Court's recognition that a municipality is a "person." Taken together, this Court's decisions in *Monell* and *Fact Concerts* interpreted Section 1983 in a manner consistent *both* with the understanding of the term "person" that prevailed in 1871, and with 1871-era judicial opinions regarding the appropriate scope of remedies in a suit against a local government.

Unlike Section 1983, the FCA precisely defines the sanctions to be imposed on any "person" who is found to have committed the acts proscribed by the statute. 31 U.S.C.

3729(a). In light of the established meaning of the word "person," the clear import of the statutory text is that the remedies specified in Section 3729(a)—treble damages and civil penalties—may properly be imposed upon localities. Petitioner is therefore wrong in contending that "[t]he text of the 1986 amendments contains no expression of any intent by Congress that the FCA's punitive damages be imposed on local governments." Pet. Br. 26. Although the amended Section 3729 does not refer in terms to local governments (just as it does not refer in terms to commercial corporations), the term "person" has long been understood to encompass counties and municipalities, and the FCA unambiguously imposes liability for treble damages and civil penalties on "[a]ny person" who commits the proscribed acts. Petitioner seeks to use the "presumption that local governments are not subject to punitive damages" (*id.* at 24), not as a default rule that applies in the absence of express congressional guidance, but as a basis for departing from the pertinent statutory language. *Fact Concerts* does not support that approach.

b. Although the remedies mandated by the FCA may serve in part to punish wrongdoers, they are sufficiently different from traditional punitive damages that the policy concerns identified in *Fact Concerts* (see 453 U.S. at 266-271) apply with sharply reduced force. Cf. *American Soc'y. of Mech. Eng'rs, Inc.* v. *Hydrolevel Corp.*, 456 U.S. 556, 576 (1982) (explaining that the "rule limiting [a] principal's liability for punitive damages does not apply to special statutes giving triple damages"). The Court in *Fact Concerts* noted "the broad discretion traditionally accorded to juries in assessing the amount of punitive damages," and it observed that "[b]ecause evidence of a tortfeasor's wealth is traditionally admissible as a measure of the amount of punitive damages that should be awarded, the unlimited taxing power of a municipality may have a prejudicial impact on the jury,

in effect encouraging it to impose a sizable award." 453 U.S. at 270. Under the FCA, by contrast, the scope of the award is not left to the discretion of the jury but is instead specified by the statute. There is consequently no danger that the (actual or perceived) wealth of a local governmental defendant will induce the jury to award punitive remedies greater than those that Congress deemed appropriate for FCA violations generally. And because the bulk of any recovery in a *qui tam* action goes to the federal government, the concern that a punitive damages award will divert public resources to private hands (see *id.* at 267) has significantly less force in this setting.[6]

The conduct proscribed by the FCA, moreover, has an inherent financial component: the Act is directed at corrupt efforts to obtain federal *money*. As the court of appeals recognized, "[u]nder the FCA, at least a portion of the recovery will come from the monies taken by the municipality through its false claims, whereas under § 1983 both the compensatory and punitive damages come directly from the tax base." Pet. App. 15a. The financial character of the prohibited conduct also increases the likelihood that the availability of FCA remedies will deter municipal violations. The Court in *Fact Concerts* found it "far from clear that municipal officials, including those at the policymaking level, would be deterred from wrongdoing by the knowledge that large punitive awards could be assessed based on the wealth of their municipality." 453 U.S. at 268. FCA violations that are attributable to local governmental bodies, however, will

---

[6] The concern that public resources may be diverted to private parties is especially misplaced with respect to FCA suits initiated by the federal government, in which the United States retains the entirety of any award. The clear thrust of petitioner's argument is that local governments are exempt from FCA liability in those suits as well. See Pet. Br. 37-38 (arguing that exemption of local governments from the FCA's coverage leaves avenues of redress *other than the FCA*).

often result from the responsible officials' illicit efforts to obtain federal money for their localities. A local official who is willing to act dishonestly in order to further the locality's financial interests may well be deterred by the prospect that substantial monetary liability will be imposed upon the local government.

c. *Fact Concerts* does not support petitioner's contention that the 1986 amendments ousted localities from the FCA's coverage entirely. In holding that municipalities are not subject to punitive damages in suits under 42 U.S.C. 1983, the Court in *Fact Concerts* did not cast doubt on the prior determination in *Monell* that a local government is a proper defendant under Section 1983 and may be sued for appropriate *compensatory* relief. See *Fact Concerts*, 453 U.S. at 267 (because punitive damages "are assessed over and above the amount necessary to compensate the injured party * * *, there is no question here of equitably distributing the losses resulting from official misconduct"). In the present case, by contrast, petitioner relies on the presumption that localities are not subject to punitive remedies as a means of taking municipalities completely outside the FCA's coverage.[7]

There is no logical reason that Congress's decision in 1986 to increase the sanctions for FCA violations would have led it to exempt local governments from the sanctions to which they had previously been subject. If Congress had deter-

[7] Petitioner contends (Br. 37-38) that the United States will not be left without redress because other mechanisms are available by which it may recover losses caused by fraud. The House Report accompanying the 1986 FCA amendments observed, however, that "[a]lthough the Government may also pursue common law contract remedies, the False Claims Act is a much more powerful tool in deterring fraud and is used as the primary vehicle by the Government for recouping losses suffered through fraud. Thus, it is important that it be an effective tool for recouping these losses." *House Report* 18. More broadly, the long history of *qui tam* actions under the FCA underscores the congressional judgment that suits by the government alone may not be sufficient to deter false claims.

mined that the increased damages and civil penalties mandated by the 1986 amendments were not appropriately imposed upon local governments, the far more natural course would have been to retain, as to those defendants, the sanctions (double damages plus $2000 per false claim) that were available under the prior version of the Act. Congress did not limit the available remedies in that manner, but instead mandated categorically that the new remedial structure would apply to "[a]ny person" who engaged in the prohibited conduct. The *Fact Concerts* presumption is not grounded in the Constitution, but is merely an aid in ascertaining Congress's intent. It cannot bear the weight of attributing to Congress the intent of ousting municipalities from the Act entirely when it acted to expand liability for all defendants.

d. Congress's 1985 amendment to the FCA underscores the weakness of petitioner's effort to rely on the *Fact Concerts* presumption to oust municipalities from the Act's coverage. In 1985, Congress expanded liability from double to treble damages only for claims involving contracts with the Department of Defense. See p. 3, *supra*. Under petitioner's theory, that amendment expressed a congressional intent that municipalities should be treated as "persons" subject to FCA liability for some government contracts but not others (indeed, for all contracts except those as to which Congress expressed the greatest concern). In reality, the 1985 amendment indicates that Congress has viewed the questions of the Act's coverage and the Act's remedies as distinct questions, and in *expanding* the scope of available remedies in 1985 and 1986 did not simultaneously intend to *contract* the scope of the Act's coverage. The Senate Report accompanying the 1986 FCA amendments explained that the amendments provided for treble damages in FCA cases generally in order "to comport with [the 1985] legislation * * * which established treble damage liability for false

claims related to contracts with the Department of Defense." *Senate Report* 17.

C. The Court's Decision In *Stevens* Does Not Control This Case

The district court initially denied petitioner's motion to dismiss. Pet. App. 40a-46a. After this Court issued its decision in *Stevens*, however, the district court granted petitioner's motion for reconsideration and dismissed respondent's claims. *Id.* at 27a-29a. The court's reliance on *Stevens* was misplaced.[8]

1. Local Governments Are Frequently Subjected To Forms Of Liability From Which The States Are Exempt

The *holding* in *Stevens*—*i.e.*, that States are not subject to *qui tam* suits under the FCA—is not controlling here, since there is nothing anomalous about subjecting local governments to forms of liability from which the States are exempt. To the contrary, this Court has frequently recognized that state and local governments stand on quite different constitutional footing. See Pet. App. 19a (noting "the established doctrinal differences, long recognized in our jurisprudence, between the status of the states of the Union and municipal entities.").

[8] The suit in *Stevens* was brought by a *qui tam* relator, and the Court's holding was limited by its terms to the proposition that a State or state agency is not subject to FCA liability in such *private* actions. 529 U.S. at 787-788. The Court did not purport to resolve the question whether a State or state agency may be sued under the FCA in an action filed by the Department of Justice on behalf of the United States. See *id.* at 789 (Ginsburg, J., concurring). The instant case similarly does not present the question whether counties are subject to FCA liability in suits initiated by the federal government. The clear import of petitioner's argument, however, is that local governments are exempt from liability in that category of suits as well as in *qui tam* actions. See note 6, *supra*.

Thus, an "important limit to the principle of sovereign immunity is that it bars suits against States but not lesser entities. The immunity does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State." *Alden* v. *Maine*, 527 U.S. 706, 756 (1999); see, *e.g.*, *Mount Healthy City Bd. of Educ.* v. *Doyle*, 429 U.S. 274, 280 (1977) ("The bar of the Eleventh Amendment to suit in federal courts extends to States and state officials in appropriate circumstances, but does not extend to counties and similar municipal corporations.") (citations omitted). The general interpretive rule that local governments are presumptively encompassed by the word "person," while States presumptively are not, reflects the States' distinct sovereign status. See *Stevens*, 529 U.S. at 780 ("We must apply to [31 U.S.C. 3729(a)] our longstanding interpretive presumption that 'person' does not include the sovereign."); *id.* at 780-781 & n.9 (explaining that in light of the States' sovereign status, "both comity and respect for our federal system demand that something more than mere use of the word 'person' demonstrate the federal intent to authorize unconsented private suit against them"); *Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 70 (1989) (holding that a State is not a "person" subject to liability under 42 U.S.C. 1983, and explaining that "it does not follow that if municipalities are persons then so are States. States are protected by the Eleventh Amendment while municipalities are not").

2. The Reasoning Of The Court In Stevens *Does Not Indicate That Local Governments Are Exempt From Liability Under The FCA*

The *reasoning* of the Court in *Stevens* provides little support for petitioner's contention that it is exempt from *qui tam* liability under the Act. The linchpin of the Court's analysis—its recognition that the word "person" in 31 U.S.C.

3729(a) should be construed in light of background understandings of that term, see 529 U.S. at 780-782—cuts against petitioner's position in this case, since the term presumptively encompasses local governmental units. The Court in *Stevens* also noted that States are expressly included in the definition of "person" in 31 U.S.C. 3733(*l*)(4), which applies to the FCA's provisions for issuance of civil investigative demands. 529 U.S. at 783-784. From the absence of a comparable reference to States in Section 3729(a), the Court inferred that Congress did not intend to subject the States to *qui tam* liability. *Id.* at 784. The Court made clear, however, that its reasoning would not apply to any entities described in Section 3733(*l*)(4) that are presumptively covered by the term "person." *Id.* at 784 n.14.

The Court in *Stevens* also found that States are not included in the definition of "person" contained in the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801 *et seq.*, a parallel scheme that created administrative remedies in cases involving false claims. 529 U.S. at 786. The Court stated that "[i]t would be most peculiar to subject States to treble damages and civil penalties in *qui tam* actions under the FCA, but exempt them from the relatively smaller damages provided under the PFCRA." *Ibid.* Because the "persons" subject to potential liability under the PFCRA include "any * * * corporation," *ibid.* (quoting 31 U.S.C. 3801(a)(6)), respondent and other local governments are covered by the PFCRA, and the potential anomaly noted by the *Stevens* Court therefore does not exist here. The Court in *Stevens* further explained that its reading of Section 3729(a) as excluding States would preserve the federal-state balance and would obviate the need to resolve a serious Eleventh Amendment question. 529 U.S. at 787. Because petitioner is not an "arm of the State" of Illinois and has no immunity from suit under the Eleventh Amendment, see p. 27, *supra*, those concerns are inapplicable in this case.

In granting petitioner's motion to dismiss, the district court relied almost exclusively on the *Stevens* Court's determination that the remedies available under the FCA are "punitive" in character. See Pet. App. 28a-29a. In *Stevens*, however, this Court invoked "the presumption against imposition of punitive damages on governmental entities" (529 U.S. at 785) simply as an additional factor that reinforced the presumption *against* interpreting the term "person" to include the sovereign and confirmed what the Court otherwise regarded as the most natural reading of the statutory language. See *id.* at 784-786. Nothing in *Stevens* suggests that a court may disregard the presumption *in favor of* interpreting the term "person" to include corporations, the established meaning of a statutory term, and other indicia of congressional intent, in order to avoid subjecting a local government to sanctions having an essentially punitive component.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General
ROBERT D. MCCALLUM, JR.
Assistant Attorney General
PAUL D. CLEMENT
Deputy Solicitor General
MALCOLM L. STEWART
Assistant to the Solicitor General
DOUGLAS N. LETTER
MICHAEL E. ROBINSON
Attorneys

NOVEMBER 2002